

MINUTES
Board of Building & Zoning Appeals
City of Willoughby Hills, Ohio

June 14, 2016

CALL TO ORDER: 8:02 pm

PRESENT: Chairman Frank Cihula, Vice Chairman John Klements, Mark Kotoch,
Robert Bartolotta and James Michalski

ALSO PRESENT: Law Director Thomas Lobe, Building Commissioner Fred Wyss and
Clerk, Katherine Lloyd

DISPOSITION OF MINUTES of May 10, 2016

The minutes are not ready yet.

CORRESPONDENCE

- Letter dated 5/26/16 from BZA to Mr. Michael Sowul re: Case 2016-2 Decision for 2990 Erich Dr.
- Notification dated 6/2/16 sent to News-Herald re: June 14, 2016 BZA meeting.

RE: Case 2016-2 Survey of the corner lot on White Rd done by surveyor, Mr. Schade was located on the GIS Survey Site. A copy of that map was included with the 2016-2 Decision Letter.

Procedure for the BZA meeting was explained. Anyone giving testimony will be sworn in by the Law Director.

CASE 2016-3

Mr. George J. Argie, of Argie, D'Amico & Vitantonio, 6449 Wilson Mills Rd. Mayfield Village, for Michael D. Gatto, for WHOB LLC, 29010 Chardon Rd. requests to amend the restrictions of the Quit-Claim Deed adopted by the Board of Building and Zoning Appeals in Case No. 1986-6, 7-22-86 and recorded in Vol. 234 Pages 458-466, and as amended in BZA Case No. 2006-4, 8-8-2006, recorded as Document No. 2006R035882 of the Lake County Deed Records in order to limit the Deed Restrictions to the rear portion of the property Zoned R-1. The property is located at 29010 Chardon Rd. (PP# 31-A-008-F-00-028-0), is owned by WHOB LLC and is known as Squires Square.

Notice was mailed to property owners within 500 feet of said property. Drawings were available for review in the lobby of City Hall. Legal notice was advertised in The News-Herald on June 4, 2016.

PRESENT: George Argie (on behalf of Michael Gatto) and Michael Gatto (owner of WHOB LLC)

The authority of Mr. Gatto to represent WHOB LLC was submitted at earlier hearings.
Mr. Gatto was sworn in by Mr. Lobe.

Two aerial photographs of the property and area were distributed by Chairman Cihula. First photograph is an overall view of the zoning district line [blue line] extending from the rear lines of the properties to the west, across the rear of those properties, to its terminus at the applicant's east property line. Second photograph is an enlarged view of the same thing, showing the property and the adjacent property. The street light and the parking space lines are visible.

Stated reason for variance request:

Applicant seeks to end restrictions of the Quit Claim Deed put in place in 1986 and subsequently amended in 2006. They ask that the restrictions be amended to limit the restrictions to the rear portion of property that is zoned R-1. The basis for this request is that the restrictions currently in place have created a financial hardship for WHOB LLC, in that those restrictions limit the type of tenant that Mr. Gatto could secure for the property. Since 2014, 4,500 square feet of the 6,000 square feet have been vacant. Vacancies are attributed to the limitations placed on the property regarding the types of tenants that the owner can secure. Applicant requests the Addendum be amended to delete paragraph #1 relating to the commercial use of development and paragraph #4 relating to the lighting restrictions. The current lighting does not offer much illumination to the back parking

lot. Trees and shrubs enclose that area. Eliminating the lighting restriction with a little more illumination would add to marketability of the premises in terms of securing new tenants and helping the current tenants feel secure. Trash has been left in and around the dumpster because it is not illuminated. A locking dumpster was installed with limited success. Prospective tenants have commented that the back lot is a little dark at night.

Board's Discussion:

The property is 'split-zoned'. The front portion is in the B-1 Commercial District. The rear portion is in the R-1 Residential District. If all the deed restrictions were removed entirely, the bulk of the rear parking lot would have to be restored to R-1 District use. The applicant would totally lose the use of that portion.

Deed Restrictions were put on the property in 1986. At that time, the only classification for Commercial was 'B'. Adjoining residents were concerned that there was high traffic in and out during the course of the day with the dental and medical uses. The BZA and the City agreed that they were high traffic businesses. The building was built oversized for the space that it is on. The parking was borrowed from the next zoning district with the understanding that high traffic businesses would never happen.

Prior to 2006, this was all originally zoned residential property. All the other properties in the same district do not have deed restrictions on them. The applicant purchased the property with the restrictions on the property knowing that the restrictions were there.

In 2006 the City went through a comprehensive Planning and Zoning update. This piece of property was changed by the BZA, the Planning Board and Council and by vote of the Electorate. This property remained in the B-1 District. The building is oversized for the amount of square footage that is allowed in the B-1.

Deed Restrictions on the front portion are more intensive than what the B-1 District now permits. Deed Restrictions on the rear portion should not be more intensive than the B-1 District now permits. These existing conditions place more restrictions on this parcel than they do on the other parcels that are in the same zoning classification.

During site inspection, three ambulettes were observed parked in the rear R-1 portion. Our Code does not permit using a property for another business that is not part of the property. The applicant stated that he could terminate the month to month agreement for the ambulettes.

The original buffer requirement was a double row of evergreens. They no longer provide any screening up to about 5-6 feet. Screening was one of the neighbors' original concerns and why the buffer requirement was placed on there. The applicant withdrew the original request for additional lighting or a different kind of lighting. The applicant agreed that the dumpster could be moved to an area with more light.

Public Portion for Case 2016-03 opened at 8:34 p.m.

Questions and comments were limited to this appeal only. Three people were sworn in by the Law Director.

1) Arnold Weiss, 29026 Chardon Rd. [property to the rear]

Mr. Weiss asked what types of businesses would be allowed if the deed restrictions are removed to match the current B-1 zoning. He stated that 'high traffic' businesses have been an issue on this property from Day 1. Lighting is a concern. The evergreen buffer isn't working. There is a straight view into that parking lot when leaves are off the trees.

Mr. Cihula listed the Permitted and Accessory Uses as well as the possible Conditional Uses.

Mr. Lobe stated that Chapter 1137.02 of the Codified Ordinances of the City of Willoughby Hills gives a diagram of what is B-1, B-2 and B-3. Chapter 1137.02 is available on the City website.

2) James Barta, 2875 Cricket Ln. (3rd property on east side)

He is against this. More businesses of this type will cause people to wander there even more. Putting up lights won't deter people from wandering through or even allow residents to feel even safer. All of the businesses in the area are struggling. There are a lot of vacancies in commercial properties. He is surrounded by land going commercial and their drainage water. There's no place for the water to go. Business areas are encroaching into the Residential areas.

30 years ago, this was all Residential and this property was significantly deeper. It was 'shortened up' some time afterward to its current size, which is still partially in the Residential District. Every district in the City has split-zoning. Zoning was designed and laid out by a professional. The proposed change is a zone-permitted use. Taking a larger view, this is the only property within that same zone that has these deed restrictions. Legal concerns are always an issue whenever there is spot-zoning. The building is in B-1 but the parking lot extends into a residential area. The applicant would need to follow the rules for B-1.

3) Ray Wargo, 2869 Cricket Ln.

Will the rear portion go to B-1? More buffer is needed from the lighting. More white pines and a fence would stop the headlights when they are turning into the parking lot. He doesn't want to have other lights all the time either. He is surrounded by land going commercial. He is getting their drainage water.

The front portion has been B-1 since 2006. The B-1 District is the rear lines of the Credit Union and the Fireplace Shop. Those lines are projected across to this property. The applicant wants to modify the lighting in the rear to get a little more lighting without shining into the neighbors' yards.

Public Portion for Case 2016-03 closed at 8:50 p.m.

The applicant formally amended his application to leave paragraph #4 and get rid of Deed Restriction #1. That would eliminate the lighting restrictions on only the B-1 portion of the property. The 2006 lighting code would affect all the area that is B-1 by law. Per discussion, all of the deed restrictions will be eliminated and the deed restrictions re-written as they pertain to the Residential portion of the property. The original restrictions were done on a Quit Claim deed which contained the legal description. The County does not accept legal descriptions in a deed any more. They are done by a registered surveyor as an attachment to the existing deed. The applicant needs to have deeds re-drawn. Both the existing deed and area under discussion need to be described by metes and bounds. A legal description for the entire property is needed because they are done as an attachment for a deed. The rear portion needs its own description to make it clear what area the restrictions apply to.

MOTION: Mark Kotoch moved at the request of the Board to postpone Case 2016-3 until the July 12, 2016 meeting for the property located at 29010 Chardon Rd. at which time the Board will continue review of what you have asked in writing.
Seconded by John Klements
Roll call: 5 Ayes.
Motion passes.

The case was postponed until July 12, 2016. This is the only notification to be made. No other notices will be mailed.

There was a Brief Recess from 8:55 P.M. to 9:02 P.M.

There are three appeals for the property at 2567 Dodd Rd. Each appeal will be considered individually beginning with Case 2016-4.

CASE 2016-4

Lois A. Mitch, 2567 Dodd Rd., requests a "Retroactive Variance Approval" for a front shed of less than 100 sq. ft. within the front setback & within a regulated floodway of the Chagrin River. Section 1133.10(f), Schedule 1133.10(b) of the Codified Ordinances prohibits sheds in the front setback. Section 1169.05(c)(1) prohibits encroachments to a regulated floodway. Section 1107.02 requires construction & use to be approved.

Notice was mailed to property owners within 500 feet of said property. Drawings were available for review in the lobby of City Hall. Legal notice was advertised in The News-Herald on June 4, 2016.

Board Member John Klements, 2550 Dodd Rd., recused himself from these three hearings to avoid the appearance of impropriety.

Law Director Thomas Lobe reviewed the legal and procedure

Any member of a board who feels he has a conflict has the right to recuse himself without a need for a vote. The voting and participating members of the Board of Building and Zoning Appeals are the ones who will make the final determination of this case. The Board should only consider the issues currently before the Board.

There was an issue from Mr. Whipple, attorney for the neighbor at 2585 Dodd Rd., who wanted this matter dismissed summarily on procedural grounds. The Law Director made legal determination that this matter will not be summarily dismissed. Courts and this quasi-judicial body prefer to have matters determined on their merits, and not on procedural grounds. This case will be conducted in a judicial manner. Witnesses will be sworn in. Exhibits will be marked. The Law Director will determine the relevancy of any admissible evidence. That applies not only to the applicants and anybody else that gives sworn testimony in this particular case.

This Board will consider as relevant admissible evidence only the answers to all questions and exhibits. Opening statements and comments from the attorneys are not evidence. Evidence comes only from the sworn testimony of the answers of those people that are answering questions and any exhibits admitted into evidence. This Board has the right to judge the credibility of each and every witness and each and every statement from each witness.

The Law Director is present to make sure there is a complete and thorough record and that due process is followed. Procedurally, he will determine the legal admission of the facts. If this decision is appealed, the standard of review by a Court of Common Pleas judge is whether there is some competent credible evidence, not a preponderance of the evidence or evidence beyond a reasonable doubt.

Board opinions are stated for the record. Evidence is utilized before a vote is made. Issues will be limited to the issues that are presented. The Board will be able to ask questions of the witnesses. The attorney will be afforded redirect. His redirect will not be on new evidence but rather to clarify on what has come up. This case will follow the same procedures that are utilized in a jury trial.

The attorney Mr. Patronite, the two applicants, Mr. Wyss and two people in the general audience were sworn in.

Chairman Cihula reminded the Board of the 10:30 PM curfew rule duly adopted by this Board. If no one made a motion by 10:30 PM to extend the curfew, the Chairman will adjourn the meeting at 10:30 PM. The meeting can be extended by motion.

PRESENT: Lois A. Mitch (property owner) and Ray Vincent (long-term co-resident partner)
and Gerald Patronite (their land use attorney)

Stated reason for variance request:

Attorney Gerald Patronite made an opening statement on behalf of the appellant. Photos and other evidence for each separate appeal were provided to be incorporated into the record as exhibits. The parties testified as to each and every one of those exhibits to qualify them as being accurate. Statements from neighbors will be presented.

Mr. Patronite had other files to explain the history of when this appeal was attempted to be filed back on May 5th and why it wasn't filed. He expressed concern that the front shed might be an element of a sacrificial lamb because so much information on the three appeals will be presented at one time.

Testimony of Lois Mitch:

She purchased the property in 2001 from her brother, Steve Mitch. It had not been good condition for many years when her brother bought it. He did a little upgrading to modernize the inside of the home. In 2005, Ms. Mitch had a landscaping project done and a separate driveway added to the front of the house so she would be able to park on the driveway instead of the grass. The contractor took care of obtaining the proper documentation with the City. No permit was required for that work. She has also made interior improvements.

It is public record that there has been a shared easement with the neighbors, Mr. Royce and Mr. Faber in place since the mid-1940's. That easement was always assumed to be a shared driveway. Her neighbor, Mr. Royce has said it is an easement that allows him to go to and from and all over her property but she cannot stand on his. She learned that it was just an Easement Document for a Shared Driveway after she was served the certified letter of the zoning complaint,

The Easement Document was reviewed the Ms. Mitch, Mr. Lobe, Mr. Wyss and Mr. Patronite. In another meeting, Mr. Patronite, Ms. Mitch, Mr. Vincent, Mr. Lobe, Mr. Wyss and attorney Mr. Anthony Aveni representing Mr. Royce went over the Easement and its ramifications in an attempt to settle the problems between the neighbors regarding that Easement.

Mr. Lobe explained the Easement between the property owners. They did have a misconception that the Easement was a driveway easement. It actually is an absolute Cross Easement for the entire property, not limited to a driveway. The Cross Easement allows each of the neighbors to go all over each other's entire property. It is a private matter, not a municipal concern or a matter for the Board. The front shed is the issue at hand.

In 2009, the front shed was put there. In 2009, Mr. Wyss was the Building Inspector. In 2015, a complaint about the front shed was generated by a neighbor, Mr. Royce. Ms. Mitch received a violation letter from Mr. Wyss. Attorney Aveni on behalf of Mr. Royce sent letters to Mr. Patronite.

Ms. Mitch identified photographs in Applicant's Exhibit A, which are further described in the Exhibit List. Mr. Royce posted "No Trespassing" signs reading "POSTED" to keep the applicants off his property but Mr. Royce told them that he can go on every square inch of the applicant's property. Photographs show the front yard, the house from the road and the driveway under

construction to make additional driveway space on the applicant's property. The addition, some improvements and landscaping can be seen. Her address is on the front of the house.

Photographs show cars parked in the driveway and on the easement blocking access to their rear shed. That is why the front shed was built. The front shed allows ready access to those seasonal items and equipment needed frequently or are common use regardless of where the neighbors are parked. Now they have two sheds. The interior size of their house is very small. It was originally a summer cottage. It would be a real hardship if they had to remove the front shed.

Location of front shed was marked on the Lake County GIS Department Aerial View of the property. Another photograph showed that the two neighbors are not able to see the shed when looking from their windows or from their front or back yards. The shed cannot be seen from Mr. Royce's front yard.

Ms. Mitch discussed how close Mr. Royce parks cars to her house and the pattern and the daily frequency that his cars block access to the applicants' cars and access to the rear shed. An easement overlays that for the driveway. The '1945 Easement' discussed by Ms. Mitch and Mr. Patronite at City Hall with Mr. Aveni and Mr. Lobe is part of Exhibit A.

Ms. Mitch had four surveys done of this property. First was for purchase of the home. Second was to ensure that the property stakes were 'true'. Third survey was to be certain that the applicants were within their boundaries for landscaping and to remove trees from the center of the driveway. Fourth was to replace pins that had been removed from their driveway and placed elsewhere. Ms. Mitch heard Mr. Royce telling a police officer in her presence on her property that he had removed the stakes. When the police report was written, the report only shows that Mr. Royce stated that all he did was add more poles/flags/identifiers so that he could see it better.

Building the driveway and expanding it on her property did not alleviate the problem with Mr. Royce's parking next to them or blocking the rear shed. Mr. Royce and his visitors go in and out of the existing driveway and do not stay on his property.

Mr. Lobe stated that, just because Exhibit A was submitted and identified, does not mean they are admissible. The Board can consider them. Other documents submitted by Mr. Patronite would be labelled Applicant Exhibit B, C, D, E, etc. If Mr. Whipple produces documents for evidence, those documents would be labelled 1, 2, 3, 4, etc.

Mr. Patronite stated that it was unclear whether the front shed predates the current Zoning Commissioner's tenure. In closing, he said that the Code for Criteria for Variances does address the narrowness, shallowness or the steepness of the lot, the effects on the other neighbors on the street and it would be not inharmonious with the residential use of the situation. These are factors the Board will take into account.

Mr. Whipple had no questions for Ms. Mitch.

Information Based on Questions of Ms. Mitch from the Board.

In 2009 the 80 square foot front shed that measures 8'x10' was installed without approval from the City. Ms. Mitch showed the yellow-capped Schade surveying stakes in the driveway to Mr. Cihula. The stakes were moved after they were placed by Schade. Mr. Schade had to come back and they had to pay him to do it again. The surveyor verified that the stakes were in place when Mr. Cihula saw them. Ms. Mitch also pointed out the other stake near the street which would be well over Mr. Royce's driveway. It appears to be approximately 18 inches from the beginning of the left side of what appears to be his property. At this point in time, Mr. Royce's driveway is not solely on his property. To stay off the Mitch property, Mr. Royce would have to make minor modifications to his driveway to have sufficient width on his property because it is narrow. His property gets wider heading back to the river. Three quarters of the driveway is on Ms. Mitch's property. It goes on an angle but there is a granted easement on it.

Mr. Lobe explained the difference between property lines, as defined by the original legal description, and easement rights. There is some testimony here that somebody moved the stakes but there are property lines. The problem is that these are two contiguous, almost similar-sized lots in size and looks. The easement allows one party to go over all the property of the other and allows the other party to go all over their property. We believe that the parties did not prepare this deed. They inherited these easements when they bought the property and did not know the express language. Mr. Lobe determined that the parties do have the right to go over each other's property even though their property lines are separate and distinct. The easement rights go much further than just their property line. That is the same facts and circumstances for both of the neighbors that have the contiguous properties. The front property stake shows the property line but it is not part of the easement. The appeal is for a front shed of less than 100 square feet within the front setback and within a regulated floodway. There is sufficient property that the shed could be placed somewhere else.

Mr. Wyss is the City's Flood Plain Manager,

The question of whether moving the front shed to the rear would be beneficial or detrimental to the property, the river or management of the flood plain was addressed. A shed of less than 100 square feet would be allowable because it assumes it would not alter the elevation of the base flood elevations. In the event of a 1% chance flood, elevation of the water is key for any type of encroachment placed in the Floodway or Flood Plain.

The Planning and Zoning Commission has ruled that a 100 square foot shed or smaller would be allowed anywhere in the Floodway. He provided the Federal Guidance for Floodway and Floodplain Regulation marked as Applicant Exhibit B which is further identified in the attached Exhibit List. Mr. Wyss stated that the main issue on the front shed is in the front setback. He recommended that the shed be in the front further away from the river. The Floodway is somewhere in the front of the Mitch property. It would have to be surveyed to locate the Floodway Line exactly. The Flood Plain comes all the way up to Dodd Rd.

In 2009, Mr. Wyss had observed the front shed out of the corner of his eye some time prior to the complaint. He observed that there were more constructions without permits. It was not regulated at that time. After the complainant came forward, Mr. Wyss documented when the various obstructions were built. Mr. Wyss submitted GIS Ortho photographs from 2007, 2011 and 2014 which are public records. They were labelled as Appellant Exhibit C, pages 1 (2007), 2 (2011) and 3 (2014) which is further identified in the attached Exhibit List. The 2014 GIS Ortho Photo is the first time that the front shed is visible in an Ortho Photo.

Mr. Wyss began his term as Willoughby Hills Building Commissioner in 2008. In the summer of 2009, he was incapacitated with a heart surgery. He states the front shed got built without his knowledge.

There were no questions from Mr. Patronite, the attorney for the applicant, for Mr. Wyss only.

Information Based on Questions of Mr. Wyss from Mr. Douglas P. Whipple, Attorney for Mr. Eric Royce

Mr. Whipple referenced Exhibits C-1, 2 and 3. During viewing of the 2011 photo, Mr. Wyss submitted to Mr. Whipple's conclusion that shed can be seen peeking out under a tree in the photo. A tree was cut down after the earlier aerial photos were taken.

Mr. Wyss confirmed that he was Building Commissioner in 2009. He had not observed the front shed before he went on medical leave. The first time he observed the front shed was sometime way after he came off medical leave. He confirmed that no permit application was ever submitted during that period of time. If a permit application for a shed had been submitted, a notice would not have been given to Eric Royce.

Information from Questions of Mr. Wyss from the Board.

The front shed would have needed a variance to put it where it is because it is an accessory building in a front setback and this front setback is not 200 feet.

Mr. Lobe explained that a variance is still needed as a matter of law. The applicants are coming to the Board as the evidence suggests for Board determination after the fact, but they still need it.

Information from Questions of Mr. Ray Vincent from Mr. Patronite on the issue of the front shed.

He heard and agreed with the testimony of his partner, Lois and her statements about what can and cannot be seen from the street and what the photos show. The front shed is a practical necessity because of the materials and the tools stored in it and due to the present relations with Mr. Royce and his parked cars blocking access to the rear shed. It would be a real hardship if the front shed were removed to the back. He needs to get to the tools and seasonal equipment so he can maintain his own property and help the people who rely on him. Knocking on the door to ask Mr. Royce to move the cars restricting access to the back shed for the lawn mower or snow blower would be a very big inconvenience.

Their house is very tiny. He knows that two sheds on one property are permitted. During this case process he has learned that the size of the front and back sheds combined would not violate the square footage requirements for having two sheds on one property.

Mr. Whipple had no questions of Mr. Vincent. None of the Board members had any questions of this witness.

(Lobe) Any questions from the Board?

Mr. Cihula stated that both the property and the house are legally nonconforming. The Code requires one acre. The property is not. The Code requires a minimum of 1500 square feet for the house. The house is not.

Mr. Whipple had no other questions of these witnesses. He asked to present a short testimony on the front shed only.

This will be considered the Public Portion.

Public Portion for Case 2016-04 opened at 10:06 p.m.

For the record, the following witnesses have been sworn in. Each of the witnesses identified himself:

- Douglas P. Whipple, of Whipple Law LLC, 13940 Cedar Rd., Suite 420, University Hts., Ohio 44118. Mr. Whipple is representing Eric D. Royce.
- Eric D. Royce states that he has a number of properties. 2565 Dodd Rd. is one of them.

Testimony of Eric D. Royce

2565 Dodd Rd is his secondary residence. It shares a boundary with Lois Mitch's property at 2567 Dodd. He was acquainted with this front shed that has been in testimony. When asked about the impact of this front shed on his street and on his property, he states that it is not brand new; it is not in the greatest condition; and it doesn't look good in the front yard. It was put there and not under the zoning ordinances and laws. There is sufficient property or acreage on her property so that it could have been located in the back instead of the front. He feels this shed that is in the front yard should probably be demolished. Responding to earlier testimony that he was accused of blocking their vehicles in the common driveway, he states that he is not the one who blocks the applicants' vehicles. He says they block his vehicles. He has a lot of pictures.

Questions of Mr. Royce from Mr. Patronite on the sole issue given in testimony.

Mr. Royce confirmed that this is his secondary residence. He takes a Homestead Exemption on a primary residence. He takes one Homestead Exemptions. He maintains that Public Record does not show that he and his partner, Mr. Faber, have two residences listed for two Homestead Exemptions in Lake County. Mr. Patronite submitted the record to Mr. Royce as evidence marked Applicant Exhibit D which is further identified in the attached Exhibit List.

Mr. Royce was shown the three-page exhibit marked, Exhibit D-1, 2 and 3 taken from Public Record. Exhibit D-2 is an excerpt from the County that Lois Mitch sent to Mr. Patronite. Mr. Royce agreed that it shows two houses. One is 10258 Johnny Cake Ridge. The other is 10686 Johnny Cake Ridge. It shows Royce, Eric and Michael Faber, in that order. It shows that there is a 2.5% Homestead Reduction and also a Homestead Reduction for disability. On page 2 on the right hand column, it shows two primary residences.

When asked to explain how he and Mr. Faber were taking on two Lake County properties, both on Johnny Cake, both as their primary residence and two Homestead Exemptions according to existing public record, Mr. Royce explained that 10686 Johnnycake Rd. is owned as primary residence by Terry Faber. That is his primary residence. They are just on the property with him. Terry Faber is Michael Faber's brother. He is the main owner of 10686 Johnnycake Rd. It is his property and his main primary residence. The 10258 property was rolled to 36900 Eagle Rd. by the Auditor's office. He had to pay back taxes because she forgot to transfer. He had his deeds.

Mr. Royce and Mr. Faber both own those two properties. Mr. Faber gets one as his primary residence. Mr. Faber and Mr. Royce are both on the deed on these two out of his 14 properties. Mr. Royce agreed that he and Mr. Michael Faber were residents on Dodd Rd. Mr. Terry Faber is the primary resident on Johnny Cake, not Michael Faber. Michael Faber is his partner. Terry Faber owns 10686 Johnnycake as a primary residence. Although the Deed and Exhibit D-2 both show Michael Faber for both of them. Mr. Royce disagrees. He states that is just on the bank note.

On the deed, Mr. Royce with Mr. Michael Faber as tenants in common own the 10258 Johnnycake Ridge property. It is a rental. Although both are listed as claiming it as a primary residence, Royce stated that it is not. The Auditor's office straightened it out before he did taxes last time.

Mr. Lobe stated that Mr. Patronite was challenging credibility of the witness and that the witness understood the questions and answers. Mr. Lobe admitted those questions and answers for the Board's consideration.

Questions of Mr. Royce from the Board

Mr. Royce confirms that the property on Dodd Rd. is adjacent to the subject of the appeal. He states that Michael Faber is the actual owner of the address listed by the Auditor's office as 10283 Johnnycake Ridge Rd, not Eric D. Royce. They (Michael Faber and Eric Royce) own all this property together. Faber's main residence is 10283. Royce is 36900 Eagle. They have a second home between them on Dodd Rd.

Notice for this appeal was mailed to the address at 10283 Johnnycake because the Auditor shows that as his owner address. Mr. Royce states that his driver's license says 36900 Eagle Rd.

For the record, Mr. Lobe stated that a driver's license can be proof of residence but it is not the absolute proof for residency as a matter of law. Also, people can have more than one residence. He noted that there were no further questions on the residency. The true issue at hand is the front shed.

Regarding Mr. Royce's comment that the front shed is in poor condition, Mr. Cihula stated that he touched it and it looked like it was in good condition. Mr. Royce stated that it was the interior structure of the shed that was not in good condition. Mr. Royce acknowledged that he could not see the interior structure of that shed from his house.

Mr. Whipple had no further testimony. Board members had no further questions or comments of the applicant. Mr. Royce was excused.

Public Portion for Case 2016-04 closed at 10:37 p.m.

Introduction of evidence for Case 2016-04 was closed.

MOTION: Mark Kotoch moved that the Board approve Case 2016-4 as requested and grant a variance for a shed in the front within the front setback and regulated floodway due to the fact that it does not impact the floodway with the size of the unit being under 100 square feet.
Seconded by Mr. Bartolotta.

Discussion:

Assuming the motion passes, they would still need to do that as a formality so the City would have not only this record but also a permanent record on file with the city. There are several items in 1117.09 that would justify the granting of this variance.

Roll call: All Ayes.

Motion passes 4/0.

The variance for the front shed is granted. The applicants need to see the Building Commissioner to get a permit and pay the fees for the permit. If there are any extra fees that may be chargeable for being late applying for a permit for something that is already done, the applicants may have to pay that also.

Exhibits A, B, C and D for this particular case will remain as part of the official record in the Exhibit List.

MOTION: Mark Kotoch moved to extend the time limit for the meeting to 11:00 PM.
Seconded by James Michalski
Roll call: 4 Ayes.
The time limit is extended to 11:00 PM.

CASE 2016-05

Lois A. Mitch, 2567 Dodd Rd., requests a "Retroactive Variance Approval" for a roof addition over an existing foundation and an addition to the north side of an existing structure. Section 1169.05(b)(1) of the Codified Ordinances requires a substantial improvement of the structures lowest floor to be elevated above the Base Flood Elevation as determined by a surveyor or licensed professional engineer. A new encroachment in the floodway requires a hydrologic & hydraulic analysis per Section 1169.05(c)(1).

Notice was mailed to property owners within 500 feet of said property. Drawings were available for review in the lobby of City Hall. Legal notice was advertised in The News-Herald on June 4, 2016.

PRESENT: Lois A. Mitch (property owner) and Ray Vincent (long-term co-resident partner)
and Gerald Patronite (their land use attorney)

Law Director Thomas Lobe: For the record, the legal advice and admonishments provided in the previous case are incorporated and wholly restated in this particular case. The record will supplement that the same advice is given in this case as in previous case.

All that legal advice and admonishments were herein incorporated in all three cases for Board consideration. The witnesses are still sworn in. The witnesses on this second Hearing are no different than the first Hearing. Swearing of the witnesses will continue from the previous Hearing, in this Hearing and through the third Hearing without doing the same and without being repetitive. Exhibits will be marked whatever they are.

Gerald Patronite, Attorney for the Appellant incorporated what he said in the first case regarding the Board's powers, the equities and the balancing of the equities. The City of Willoughby Hills is where the 'Country meets the City'. Dodd Rd. is the

Country. This is not a new development. This house on Dodd Rd. dates from the 40's or 50's. Its footprint was not expanded or changed. The block was always there. Mr. Vincent will testify as far as the good faith, reason why this was done and his experience with the AllPro Building Construction Company. Mr. Patronite did not realize that the permit in the file was just for a roof extension over the hole underneath. It was not for the whole addition. The applicants will explain why that extension and the addition were necessary and its history.

Mr. Patronite submitted Appellant Exhibit E. For the record, the exhibit was been marked but not admitted. It is identified further in the attached Exhibit List.

Testimony of Ray Vincent.

Mr. Vincent is the co-occupant. Mr. Vincent explained the documents in Exhibit E. He identified Exhibit E-4 as a County record for the house which shows the approximate size of the foundation with the addition and the roof over it. Before construction to extend the roof and build an addition, it was an open foundation in the house with a concrete stairwell into it. Rain and weather ran directly into the basement. There was nothing to protect it. The applicants hired AllPro Roofing and Construction to put a roof on it and an addition over that to block it off so they didn't have water going in anymore. Vincent found them in a weekly ad. He knew nothing about them.

There is an application from Building Department records dated June of 2012 for a permit and a fee of \$175.75 paid. AllPro Roofing took out the permits and charged the applicants for the fees. Mr. Vincent never asked AllPro what was on their permit application or what the fee was for before they started construction. The permit was posted on their trailer all during construction. Mr. Vincent does not know whether there was a building inspection during construction and permits pulled. AllPro pulled permits twice. He does not know what permits. He relied on the contractor to know what was needed and not needed.

AllPro and Vincent drew up the construction plans up together after Vincent told them what was needed. After they agreed on a price, AllPro was hired and took the plans to pull permits. The plans were never seen or found in the City Building Department files. Mr. Lobe stipulated that the City does not have the plans.

The face of E-7 shows that there were approvals for roof, any other ice guard, framing okay, sidewalls. Once the complaint was filed by the City, Vincent thought that this was the permit that permitted the entire addition. After discussions with Mr. Wyss, they learned that the permit was only for the roof over where now sits the addition. Exhibit E-8 is the City of Willoughby Hills Inspection Record. The bottom says 'framing okay', rear roof, unfinished attic', etc. That was signed by Mr. Wyss. They are not saying that Mr. Wyss approved the entire addition construction. Mr. Lobe accepted the stipulation.

There were Before and After Photos of the construction of the 5x12 ft. addition showing that it was added over an existing 5-foot footprint. It just covered the existing concrete. They are included in the attached Exhibit List.

After Vincent learned from Mr. Wyss that the AllPro permit was not the actual permit, Mr. Wyss asked for another drawing. Vincent hired his cousin Richard Vincent who is a draftsman-architect. He signed the 4-page plans at the bottom as the person who drafted them. Vincent has no reason to believe that his drawings are not accurate.

Exhibit E-14 has a notation on the side, 'merely placed the roof over the existing foundation' and that the roofing project was started and ended in 2012. This dovetails prior exhibits in the plans. It shows the Before and After. Photos in E-15 show the original condition of the property: the original foundation. There was no extension of the foundation or structure.

For the record, Mr. Lobe incorporated the entire first hearing 2016-4 into the second hearing 2016-5. All the evidence and admonishments will be incorporated into the second one. This will be one large record. We have the same witnesses for the record.

Questions for Mr. Vincent from the Board

Mr. Vincent intend from the start to put a roof and three walls on. He confirmed his earlier testimony regarding permit being pulled by the contractor and permits hanging on the construction trailer that he did not read. Vincent hired him as a contractor. He expected the contractor to do what he was asked. At the first inspection, the roof with supports on the bottom was done. That picture shows just the roof. There is no joisting.

The Board had no further questions of this witness.

Testimony of Lois Mitch by Mr. Patronite on the second issue concerning the addition

Ms. Mitch confirmed Vincent's testimony. She gave Mr. Patronite three separately signed documents from the applicant's neighbors stating that they did not object to the addition or the front and back sheds. He entered them as Exhibit F-1, 2, and 3. They are further identified with Appellant Exhibit F in the attached Exhibit List.

Mr. Lobe noted for the record that they are original documents but unsworn testimony. He advised that the law prefers live testimony or affidavit testimony. The Board can consider them at this time but the documents will be subject to further cross examination by Mr. Whipple. None of these neighbors have spoken previously on the first appeal.

There was no cross examination by Mr. Whipple nor any questions from the Board for Ms. Mitch.

Public Portion for Case 2016-05 opened at 10:49 p.m.

The rules from the last appeal still apply.

Mr. Whipple distributed Whipple's Exhibit 2, pages A-O. It is further identified in the attached Exhibit List. The Building and Zoning Administrator Fred Wyss was called as his first witness.

Testimony of Fred Wyss

Mr. Wyss identified the documents in Exhibit 2. The Notice of Violation dated June 5, 2015 issued by Mr. Wyss shows a number of violations including the addition that is the subject of Case 2016-5. There is an email dated January 26, 2016 from Mr. Wyss to Mr. Patronite. In this message Wyss discussed the unpermitted accessory structures and other improvements made in the Flood Plain. He stated that a final notice of violation would be forthcoming. Per Mr. Lobe, these matters were provided to Mr. Whipple pursuant to a Public Records Request. They are true, accurate and authentic copies of the City's records. Email dated March 7th from Wyss says "rear addition over steps" and there is 'an encroachment in the Floodway of an A.E. Zone. Therefore, an H&H (Hydrologic and Hydraulic) study must be done by a licensed professional engineer to prove no rise of the flood levels as stated in Section 1169.05 Subparagraph C, subparagraph 1'. No such study has been received. Email dated May 4, 2016 discussed this particular addition and the need for the H & H analysis. One of the reasons their application for a building permit was denied was the absence of the Hydrologic and Hydraulic Analysis. In the email with Mr. Patronite dated May 3, 2016 at 3:13 PM., Wyss stated he was waiting for a response to the rejection of application and that a study from a professional engineer about the Flood Plain had not been received despite reminders. No application for variance had been received. Therefore, he had not denied that application. A document shows the rear yard setback.

Questions of this witness by Mr. Patronite

In the email back to Mr. Patronite, Mr. Wyss again warned him and the applicants that a Hydrological Survey was needed. It alludes to it by the nature of the statement about improvements that had been made in the Flood Plain. The Flood Plain Regulations would have to be in order. The Hydrologic Analysis is in the Flood Plain Ordinance.

MOTION: Mark Kotoch moved to extend the time limit for the meeting to 11:30 PM.
Seconded by Robert Bartolotta
Voice Vote: 4 Ayes.
Time Limit is extended to 11:30 PM

Mr. Wyss confirmed that to his knowledge, this Dodd Rd. property was not at any time considered a 500-year Flood Plain by FEMA or by its predecessor. He confirmed that Lois Mitch presented documents from Nationwide Insurance that her insurance is based on a 500-year according to their records. He entered those documents into evidence as Exhibit G. They show that Nationwide Insurance analyzed her property as being an "X" zone. At the time these documents were done, we were under 'Flood Map'. It would have been the understanding of the appellant that she was in a safer flood zone, not in the highly regulated 'AE' or 'A' zone. The documents are further identified in the attached Exhibit List

Part of this variance request would allow an encroachment in the regulated Flood Way for this small addition. It increases the footprint of the existing structure. That structure that was never in the Flood Study in the first place. When the flood studies were done, no structure along the Chagrin or in any of the neighborhoods that are in the 100-year Flood Plain were ever entered into the Hydraulic Analysis for the Chagrin River.

Regarding the testimony and pictures that this addition did not increase the footprint because the foundation block was already there, Wyss stated that it increases the encroachment due to the elevation of the addition itself. The 100-year Flood Plain goes all the way up to Dodd Rd. The whole addition itself adds to the encroachment in the 100-Year Flood Zone from the existing block on up. An H & H survey analysis would indicate how much the addition would increase it.

Mr. Wyss confirmed that the applicant was in process of applying for the variances, that they needed more time because they were searching for a Hydrological Engineer and they requested suggestions from Mr. Wyss' office. Mr. Wyss did not recall

stating that it was an advisory for either Planning Commission or BZA and, while it would be good to have a Hydrological study done, it was not a necessity.

AllPro started the work and then got a permit after the fact for the roof structure over the existing footprint of the house, not for the stairway addition in the back.

Wyss knew that the stairwell was there during inspection of basement in 2010 when they were putting in a new concrete floor. They took the addition up from existing grade of the stairwell. The existing grade of the stairwell was part of the footprint of the house. When it was raised up, it encroached more in the Flood Plain because it increased the footprint from the outside of the home. There's a difference in an encroachment situation in the Flood Plain. For a 100-year Flood Plain, the BFE level, anything below the BFE level is a new encroachment.

There were two different inspections on the same day both dated 7/6/16 in two different handwritings. The Building Inspector on each is Fred Wyss. Mr. Wyss stated that the document dated 7/6/16 at 12:30 PM. may have been misdated; it was generated at the time Mayor Weger made him aware of the roof being done. That one was not signed because Mr. Wyss was at the site. It did have a building rough, it was approved. OK on the side walls. It said 'framing is ok'. 'Sidewalls'. The applicants had not secured the permit at that time. The signed second document dated 7/6/16 at 1:30 PM of the framing was after they secured the permit. The permit and the inspections thereof are for a roof over an existing house. The house foundation was always there, not the addition to the stairwell. He never saw that addition.

Per discussion of the four photos in Exhibit E-9, portions of the foundation were shown. The stairwell was there and it seemed about 18 inches of the ground. The enclosure around the stairwell was there. The encroachment of the addition is in the Flood Plain.

There was an earlier question about whether the roof under discussion was the roof documented in Auditor's Property Record Card which is marked Applicant Exhibit H. It shows a permit 2012-191 dated June 29, 2012 for a roof. Wyss stated that it was for the roof over the existing house. They re-roofed the whole house from the front all the way back including the framing for the saltbox addition on the rear of the house. There was no permit issued for the roof over the stairwell.

Mr. Wyss thinks he had to step over the stairwell a little bit to go down the stairs. The entrance to that stairwell is also at that same height. It is in a flood plain zone. It is probably raised higher. There was only the existing foundation. If the Board were to grant this variance, it would be at the Board's discretion to eliminate the need for a Hydrologic and Hydraulic Analysis. Applicant Exhibit B-2, Item 8 in the Federal Emergency Management Document, has to do with hydraulic shadows. The Flood Plain is a 3-dimensional object. The BFE is in the middle of this new addition, the height of the BFE.

Mr. Vincent testified that the foundation goes back to antiquity. The addition on the foundation goes back to 2012 when the inspection was.

Mr. Whipple asked that Exhibit 2 be entered into evidence. Mr. Lobe allowed Exhibit 2 in as relevant.

Mr. Whipple objected to Exhibit F as being unsworn hearsay. He did not receive it before tonight, through Public Records or any other way, so he had no opportunity to evaluate, cross examine or rebut. Mr. Lobe did not admit the three written documents in Exhibit F as evidence. The Exhibits F-1, 2, and 3 are stricken. This decision to strike Exhibits F-1, 2, and 3 is noted in the attached Exhibit List. Ms. Mitch's testimony about Exhibit F still stands as evidence.

Mr. Patronite submitted the document, Planning Commission Public Forum Portion from the minutes of the Planning and Zoning Commission of Willoughby Hills just handed to him by Lois Mitch. She pointed out a FEMA Guideline on Flood Plains. It says, "FEMA has a Guidance now in 1993, small insignificant development in a flood way of the Chagrin River specifically says the 10x10, 100 sq. ft. shed, monitors, guidelines and other structures are discretionary", Mr. Wyss confirmed this. It was marked Applicant Exhibit I, page 1 only. It is further identified in the attached Exhibit List

No one else in the Public came forward to speak. Mr. Wyss was dismissed.

Public Portion for Case 2016-05 closed at 11:26 p.m.

Board Discussion:

In document 2, there are a number of emails and correspondence between the attorney and the party but no responses from the attorney. Mr. Wyss received responses from everybody on most of them. This is an incomplete file on the responses to these emails.

Mr. Lobe stated that for the record, the emails were provided, if not in Public Records, Mr. Whipple and Mr. Patronite received them because they sent them and received a response back. There was a multitude of documents that were produced. The parties wish to only offer these specific ones for Board consideration, but other ones were, in fact, produced. The Board is limited solely to the ones that are introduced and allowed into evidence and are marked as exhibits.

MOTION: Mark Kotoch moved to extend the time limit for the meeting to 11:40 PM.
Seconded by Robert Bartolotta
Voice Vote: 4 Ayes.
Time Limit is extended by 10 minutes to 11:40 PM

MOTION: Mark Kotoch moved that the Board approve Case 2016-5 as requested and grant a variance at the property located at 2567 Dodd Rd for a roof addition on an existing structure due to the existing foundation, which does not increase further into the flood plain.

Board Discussion:

The whole structure is included, up and down and the roof.

Seconded by Robert Bartolotta
Roll call: 4 Ayes.
Motion passes.

The variance for Case 2016-5 is granted. For the record, the applicants are still required to pull the permit and anything else required by the Building Department so they have complete records.

CASE 2016-06

Lois A. Mitch, 2567 Dodd Rd., requests a "Retroactive Variance Approval" for a back shed in excess of 100 sq. ft. in area, within the side setback and within a regulated floodway of the Chagrin River. Section 1133.10(f), Schedule 1133.10(b) of the Codified Ordinances requires 15' side setback. Section 1169.05(c)(1) prohibits encroachments to a regulated floodway. Section 1107.02 requires construction & use to be approved.

Notice was mailed to property owners within 500 feet of said property. Drawings were available for review in the lobby of City Hall. Legal notice was advertised in The News-Herald on June 4, 2016.

For purpose of this record, all the evidence heard here tonight as if fully restated is being incorporated into one full record. Participants are allowed to use all the evidence from the prior hearings for any determination made today.

PRESENT: Lois A. Mitch (property owner) and Ray Vincent (long-term co-resident partner)
and Gerald Patronite (their land use attorney)

Stated reason for variance request:

Mr. Patronite states that his clients did not go willy-nilly on this shed. Mr. Vincent specifically addressed the rear shed and its location with Mr. Wyss. There is contradictory testimony about what went on, where the shed is placed, when it was build and with whose oral permission. We are here because we now know that the shed does require a permit.

Testimony of Mr. Vincent

Mr. Vincent explained Exhibit J. It is an aerial view which depicts the location of the rear shed with the addition and the house in the middle. The shed is sandwiched against the house. Mr. Vincent has been on the property when the river floods. The river has never hit that shed in its worst floodplain stage where it goes down the river, curls up, comes back to hit Mr. Royce's house. The flooding from the base of the shed is still 10 feet away.

Exhibits J-5 and 6 are the documents Mr. Vincent obtained from Lowe's for this prefabricated shed. He got them when they wanted to purchase the shed. In 2010 he went to the Building Department when it was still in the basement to ask Fred about having a shed. He did not apply to the City Building Department for a permit to place or construct this shed, *per se*. He met with Fred to get the initial startup on it. Fred showed him the Zone 'X' where we were and what I would need for placement and correct installation with 4x4s and chains to anchor the shed.

Mr. Wyss was on their property when Mr. Vincent showed him the drawing and asked if he could have that shed on the east side in the back. Instead, Mr. Wyss picked out the current spot at the end of the drive. Mr. Vincent dug up and move dogwoods and trees to get it there. He did not think about a permit and Mr. Wyss never mentioned it. Mr. Vincent went to City Hall twice with these plans and spoke to Mr. Wyss both times. Eric and other neighbors who lived there at the time were there when Mr.

Wyss was at the house advising him. Mr. Wyss told him where to put it, how to anchor it and that he could have the shed. Had he known he needed a permit, he would have gotten it right then.

Mr. Whipple had no questions of this witness on this issue concerning the back shed.

Questions of Mr. Vincent from the Board concerning the back shed

The back shed was 160 sq. ft. The Building Commissioner had the authority to approve it without going to the Architectural Board. Mr. Vincent stated that he misunderstood the fact that he didn't need a permit. A permit was not discussed. He assumed that Fred said that he could have that size shed. The City still requires a permit. It just didn't have to go before the Architectural Board of Review. The shed was measured as 10x16 which is still over the 100 sq. ft. that would be displaced.

MOTION: Mark Kotoch moved to extend the time limit for the meeting to 12:00 Midnight.
Seconded by Robert Bartolotta
Voice Vote: 4 Ayes.
The time limit is extended to 12:00 Midnight

Questions of Mr. Vincent from the Board concerning the back shed continued

Mr. Vincent does not recall anything about the 15 foot sideline setback requirement of the city. The approximate width of the property at the location of the shed is 50 feet. This shed, in its present position, is anchored based on requirements established by Willoughby Hills with a 4x4s concreted in and then it is chained. The shed has a wood floor. It would be very difficult to move the shed because of the 4x4 post construction cemented into the ground. There are two issues: the side yard clearance affects Willoughby Hills. The 10x16 size of the shed in the Flood Plain affects the United States. If it comes loose, it becomes a problem if it hits something downstream. If it measured 10x10 (100 square feet), it would not be a problem. In this requirement, Mr. Vincent is limited by the 100 square feet.

Questions of Mr. Vincent from Mr. Patronite

The river flows from East to West behind his house. The river would have to hit the eastside of his house before it would affect the shed. For the river to get that high, it would impact his house and the shed together. The Board would decide whether it stays or it is dismantled. He can't practically move it. He has to keep all of his equipment in the shed.

Mr. Whipple had no questions of this witness.

Additional Questions from the Board for Mr. Vincent

This shed was built in 2010. When asked if there has been a significant flood since 2010 in the Dodd Rd. area, Mr. Wyss stated that he would not categorize the March 2015 as a significant flood. It did not affect this property owner.

Testimony of Lois Mitch

Ms. Mitch did not disagree with any part of Ray Vincent's testimony as far as the river flow, the foundation of the shed and the construction of the shed. She knew when Ray went to see Fred Wyss, but she was not present with him. The only time that she was present was when Fred was at the house and they had the discussion with Mr. Bruckman and Mr. Royce about the placing of the 10x16 shed right where it was going to be because it was further up from the river, and it could not be right behind the house because of the size. The neighbor, Mr. Royce, never complained about this shed until last year.

Because Nationwide Insurance declared their house in Flood Zone X, Ms. Mitch understood that she did not need to meet any of the Flood Plain requirements that have been spoken about. Mr. Wyss explained earlier that the insurance interpretation is not binding as competent evidence because the 100-year flood, not the 500-year flood, goes the entire way up to the edge of the pavement on Dodd Rd. Ms. Mitch stated her opinion that if the river got high enough and quick enough, Bruckman's house to the East would plow over the shed and the house and Royce's house. Everything would be gone. Therefore the shed is insignificant because it is less than 10% of the property value, including the contents. In the FEMA context, if the river rose slowly as it did with the ice dam of 2015, because it was a jam, it came up quickly but the river was still. Therefore, it actually back flowed and it would have pushed Royce's house into our house and into the shed and taken it away that way. When it backflows it 'moats' the properties before it comes up.

When she met with Mr. Lobe, Mr. Wyss and Mr. Royce in September, she showed photos and the video of the river passing her house, curling all the way around the bend and then coming up onto Mr. Royce's property, his first or second or third lot down. Those photos and video show that when Mr. Royce's property floods, it doesn't affect hers and the river actually passes her house. The river will go by his parking garage on that fourth lot and it will take out his outhouse and stuff like that first, before it would come and take theirs. Everything would be gone before this shed would have any impact because it actually is elevated.

Neither Mr. Whipple nor members of the Board had questions for this witness. There were no other witnesses.

Public Portion for Case 2016-06 opened at 11:47 p.m.

Mr. Whipple called on Mr. Wyss who is still under oath.

Testimony of Fred Wyss

Mr. Wyss did not remember suggesting or recommending that this rear shed be placed in violation of the 15 ft. side yard setback. He stated that he was correct when he signed the denial of application for zoning and or building on April 5, 2016 and said that a hydrologic and hydraulic analysis was required. A hydrologic study would be required for this size shed. The applicants have not done such a study. Because of the size of this shed is over 100 sq. ft., the FEMA guidance does not apply.

Questions of Mr. Wyss from Mr. Patronite

Mr. Wyss was not aware of any application for BZA variance for a shed or an outbuilding of this nature or size that has ever come before the BZA Board before. There is no history that anybody has actually gone to an outside engineer to get a hydrological study for a variance in your experience here.

Questions of Mr. Wyss from the Board

The Board addressed the sideline and the size of the shed separately. For the sideline, the size of the lot and the size of the building are a lesser concern. A 10x10 would be permitted by FEMA guidance. It doesn't specify the number of 100 sq. ft. appurtenances on a lot. If it is a 10x10, it is insignificant. The applicants have the right is to amend their request and say that they will go with a 10x10 instead of a 10x16 so they do not have to do the study. They would need to change it or move it. Then it would be a non-issue with FEMA

There were no other questions of the Board for Mr. Wyss.

Questions of Mr. Royce from Mr. Whipple on the issue of the back shed only.

Mr. Royce was sworn in previously. He stated that the rear shed is approximately 18-20 inches to the lot line of his property. Mr. Vincent does hang ladders on the side of the shed and he does park cars right there on their property. Mr. Royce was not around when that shed popped in. They saw it after the fact. They never gave approval or worked with the applicants to say where to put it. He has complained to Lois Mitch about the rear shed. Mr. Vincent knew his feeling about it. Regarding flooding and potential for flooding, Mr. Royce thinks there is quite a bit of potential for flooding hazard. The elevation on their property has been raised up. A 4' wall of water came up in March 2015. They called the Fire Department. It came up and stopped at the level of their property. Then it raced down their driveway and flooded into their house. If the flood waters came up to where that rear shed is, it would probably bounce back at our property. Now it is sitting close to the property line.

Mr. Lobe reminded the Board that if they wanted an expert for testimony, they could get one. Testimony of Mr. Royce was allowed because the other was allowed. Credibility standards were the same as given previously.

MOTION: Mark Kotoch moved to extend the time limit for the meeting to 12:15 A.M.
Seconded by Robert Bartolotta
Voice Vote: 4 Ayes.
Time limit is extended to 12:15 A.M.

Questions of Mr. Royce from Mr. Patronite.

Mr. Royce recalls that he was present at the meeting with Mr. Veni or Mr. Lobe, Mr. Patronite and Lois Mitch on her laptop. He does not recall Lois opening up her laptop and showing video of the property of the river flowing past her house and then stopping on his property. Mr. Royce stated that it came directly up to their house. He was standing outside when it came. Mr. Royce stated that the river would come onto their property first, all the way to the driveway, all the way to the house and then down in their basement.

Questions of Mr. Royce from the Board

The rear shed is a little higher than the Royce driveway. The water that has gone to the Royce driveway did not get as far as the Mitch shed. Mr. Royce testified that the rear shed was probably 18 inches from his property line. He used the pin right by the corner of the cement turnaround thing as determination of the property line because it looked about 18 inches. The Board determined that the shed is a structure that is sitting there 'not moving'.

There were no other questions by the Board members.

Public Portion for Case 2016-06 closed at 11:59 p.m.

The Law Director stated that all the evidence and testimony had been presented. The Board could determine the case.

Board Discussion:

Two issues were questioned: distance to the sideline regardless of the size of the shed and the permissible size of the shed. If the rear shed was a 10x10 (100 sq. ft.) structure, a review would not be necessary and a variance would not be necessary for the shed or for the Flood Plain part of it. According to the FEMA Region 5 document, the City would be in violation if anything greater than 100 sq. ft. was approved. The applicant's Insurance is different from FEMA. Status of Zone X at the time the applicants put it in is not applicable because that is their Nationwide insurance. These are Federal guidelines. A variance could be granted for the sideline. The rear shed is 60 square feet over but it could be reduced down because it is built in sections. It cannot be two separate buildings. They already have two buildings. The rear shed can be no greater than 10x10. Its dimensions should be 10x10. Even though both sheds combined are under the square foot limit, the concern is that the rear shed is 60 feet over in the Flood Zone.

The applicant asked to amend their request to the permissible 10x10 sq. ft. shed instead of the originally requested 10x16 sq. ft. shed. A 10x10 shed meets FEMA regulations. Therefore, a variance is not required for a shed that size in the Flood Plain. Section 1107.02 requires that construction must be approved. Approval would be satisfied by them obtaining a building permit.

The Board stipulated that the extra 6 feet be removed from the rear of the shed. Doors are on the front. River is at the back. Building Commissioner will verify that it is done according to stipulation. Because of the unique situation here and the lapse of time, the Law Department definitely wants some time limitation when the shed reduction will be done.

MOTION: Mark Kotoch moved that the Board approve Case 2016-6 as amended and grant a variance for the property located at 2567 Dodd Rd. for a 10x10 rear shed in its existing location being less than 15 feet from the side setback, with the stipulation that 6 feet will be removed from the rear of the existing shed within 6 months' time.
Seconded by Robert Bartolotta
Roll call: 4 Ayes.
Motion passes.

The request was granted for a 10x10 shed with the stipulations as given. The applicant must obtain a permit for each one of these issues before any work is done. The Building Commissioner will provide what information is needed to get the permits.

Law Director Thomas Lobe left at 12:10 AM.
Mr. Klements returned to the meeting.

UNFINISHED BUSINESS

Instructions to Appellants – deferred to another meeting.

NEW BUSINESS

None

CHAIRMAN'S COMMENTS

- Zoning Workshop is November 4, 2016 at the Holiday Inn, Mayfield Village.
- There are two fence appeals for the July meeting. They will be heard after the postponed Case 2016-3.

MOTION: Mark Kotoch moved to adjourn
Seconded by John Klements
Voice vote: Ayes unanimous.
Motion passes 5/0

Meeting adjourned at 12:11 AM
Building Commissioner Fred Wyss left at 12:11 AM

All decisions of the Board of Building and Zoning Appeals are final within the City of Willoughby Hills. Any interested party may appeal the Board's decision to the Court of Common Pleas of Lake County, as provided for by Ohio Law.

Katherine Lloyd
Clerk

Frank J. Cipullo
Chairman

6-13-2017
Date approved